

## Task Force Comments on the Best Value Draft Legislation

### Dan Absher:

My concern with the bill as drafted is that it leaves the procedure and criteria up to each individual public body. We could end up with a wide array of best value procedures. I would prefer to see the procedures, criteria, and weighting locked down in legislation.

### Larry Byers:

Overall, I think the bill looks good. However, it seems to me that the one piece missing in this is a mechanism for evaluating a best value projects after it is completed. While I believe everything captured in the bill is necessary for awarding a best value project, the proposed bill is silent as to what happens after a project is completed. I believe the bill should make it clear that if a public body wishes to participate in a best value pilot project they will be required to submit any information that CPARB requests in order to conduct its own evaluation of the project. Since these are pilot projects, it would only make sense that they need to be evaluated independently after they are completed. I think an evaluation by CPARB is particularly important for Best Value because the term is somewhat vague and open to interpretation. It would be easy for a public body to declare a best value project as a success without necessarily pointing to specific, tangible benefits.

For that reason, I would suggest a slight modification to the very last paragraph as follows:

(4) A public body utilizing the best value contracting procedure shall submit project information as required by the capital projects advisory review board, **including any information that may be requested to determine whether the project met expectations following its completion.** Contract documents must include requirements that the contractor, subcontractors, and designers also submit project information as required by the board.

### Ed Kommers:

I was not able to attend the last Best Value subcommittee meeting, but Larry Stevens attended on our behalf.

MCAWW has not made a decision as to its support or opposition to the best value proposal but is evaluating the potential.

As a CPARB member, there are a couple of revisions that I recommend.

The first clarifies the requirement for the hearing notice. Some public bodies have interpreted current statutes to require the publishing of weights and criteria and descriptions in the notice itself. This interpretation results in unnecessary expensive column inches. My suggested language may not be the "fix" but I believe what we desire is the ability for an interested party to a) view the weights, criteria and descriptions and b) get them prior to the hearing in order to prepare a written or public response.

My second suggestion adds the requirement to comply with the bid listing statute. My wording is probably not the best, but I believe this provision will be needed to have support from particular subcontractor groups.

**RCW 39.10.520**

**Best Value procedure – Which public bodies may use – Authorized uses.**

- 1) Public bodies are authorized to use the Best Value contracting procedure where:
  - a) The public body has completed either a GC/CM or a Design-Build project in the last five years, and
  - b) Has not used the Best Value process more than two times, and
  - c) Has been authorized to use the Best Value process by the CPARB Project Review Committee.
- 2) The CPARB Project Review Committee shall not authorize more than 20 Best Value projects.
- 3) Subject to the process in RCW [39.10.280](#), public bodies may utilize the Best Value procedure for public works projects when:
  - a) The project involves construction with a high risk of cost or operational impacts or requires a contractor highly skilled with the installation of a specific system;
  - b) Implementation of the project requires specialized high level contractor's management skills during construction; and
  - c) The project has a high potential to benefit from the value added by specialized construction management.

**RCW 39.10.530**

**Best Value contract award process.**

- 1) If authorized by the CPARB Project Review Committee to utilize the Best Value procedure, the public body must:
  - a) Publish a notice to utilize a best value process to evaluate bidders in a legal newspaper published in or as near as possible to that part of the county where the public work will be constructed at least fourteen (14) calendar days before conducting a public hearing. Ensure the public hearing notice includes the date, time, and location of the hearing and **instructions as to how to obtain prior to the hearing the** specific criteria and applicable weights given to each criteria that will be used during evaluation;
  - b) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the evaluation criteria and weights for each criteria;
  - c) After the public hearing, consider written and verbal comments received and determine the final criteria and weights given to each criterion that are in the best interests of the project.
- 2) Contracts for Best Value services shall be awarded through a competitive process using public solicitation of bids. The public body shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to that part of the county in which the public work will be done, a notice of its request for bids and the availability and location of the bid documents. The bid documents shall include:
  - a) Design drawings and specifications;
  - b) A description of the contractor's qualifications, experience, and previous performance to be required of the proposer;
  - c) A description of the factors, other than modifications to the basis of design, that may be considered by the Owner that could enhance or add value to the project;

d) A description of the process the public body will use to evaluate the bid price and the qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers; and e) Compliance with the bid listing requirements as described in RCW 39.30.060

3) The public body shall establish an evaluation committee to evaluate bids based on the price and other factors, weighting, and process identified in the bid documents. Based on the evaluation committee's findings, the public body shall select the final bidder.

A public body utilizing the Best Value contracting procedure shall provide for:

a) Submission of project information, as required by the board; and

b) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.

**Daniel Galvin**

Attached are a few comments based on a quick review of the draft bill.  
Let me know if you have any questions.  
Thanks

Marsha Reilly 786-7135  
House Committee on State Government and Tribal Affairs  
July 12, 2010 (10:47 AM)

AN ACT Relating to authorizing pilot projects using the best value contracting procedure; and adding a new section to chapter 39.10 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. A new section is added to chapter 39.10 RCW to read as follows: (1) The project review committee may authorize twenty pilot projects using best value contracting. For purposes of this section, "best value contracting" means a public works project that is awarded based on a combination of price, qualifications, and value added to the overall project. In order for a public body to be

Draft

p.3

**Comment [d1]:** Is there a time period for these 20 projects? At the conclusion of the 20 projects will there be an evaluation as to whether to extend the program. Is there a sunset on this program?

**Comment [d2]:** There seems to be a disconnect between Section 1 and 3. Section 1 has a number of references to qualifications. 1(a) notes highly skilled contractor, 1(b) notes management skills. 1(c) then goes on to reference value. When you drop down to Section 3, that deals with the actual proposal, the only things that are referenced are plans and specs, and criteria for adding value. The reference to qualifications has been removed. Are qualifications separate from value or are qualifications part of value. If they are part of value than this highlighted definition my work better by removing the reference to qualifications and let value handle it. If qualifications are separate from Value, then Section 3 needs to be modified to include some reference to qualifications to be consistent with Section 1. Section 4 states the award will be based on price a value. This would seem to be consistent with the approach that value includes qualifications.

1 authorized to use best value, it must have completed either a  
2 general contractor construction manager or a design build project in  
3 the previous five years. The project review committee may authorize a  
4 public body to use best value when all of the following criteria are  
5 met:

6 (a) The project involves construction with a high risk of cost  
7 or operational impacts, or requires a contractor highly skilled with  
8 the installation of a specific system;

9 (b) Implementation of the project requires a high level of  
10 contractor management skills in a specialized area during  
11 construction; and

12 (c) The project has a high potential to benefit from the value  
13 added by a specialized construction ~~management~~ approach.

14 No public body may be authorized more than three pilot projects  
15 using best value contracting.

16 (2) If a public body is authorized a best value pilot project,  
17 it must:

18 (a) Publish a notice of its intent to utilize the best value  
19 process to evaluate bidders in a legal newspaper published in or as  
20 near as possible to that part of the county where the public work  
21 will be constructed at least fourteen (14) calendar days before  
22 conducting a public hearing. The public hearing notice must include  
23 the date, time, and location of the hearing and the specific  
24 criteria and applicable weights given to each criterion that will be  
25 used to evaluate the proposals.

26 (b) Conduct a public hearing and provide an opportunity for any  
27 interested party to submit written and verbal comments regarding the  
28 evaluation criteria and weights for each criterion.

29 (c) After the public hearing, consider and respond to written  
30 and verbal comments received and determine the final criteria and  
31 weights given to each criterion.

32 (3) Contracts using best value must be awarded through a  
33 competitive process using public solicitation of proposals. The  
34 public body must publish at least once in a legal newspaper of

**Comment [d3]:** Three Pilot Projects over what period of time? For ever, a year, etc. Suggest moving this statement to the first paragraph right after "previous five years." Subject wise it fits there.

1 general circulation published in, or as near as possible to that  
2 part of the county in which the public work will be constructed, a  
3 notice of its request for proposals and the availability and  
4 location of the proposal documents. The public body shall make an  
5 effort to solicit proposals from certified minority or certified  
6 woman-owned contractors to the extent permitted by the Washington  
7 state civil rights act, RCW 49.60.400. The proposal documents must  
8 include:

**Formatted:** Font: (Default) Courier New, 12 pt, Condensed by 0.15 pt

**Formatted:** Font: (Default) Courier New, 12 pt, No underline, Font color: Auto, Condensed by 0.15 pt

9 (a) Design drawings and specifications;

10 ~~(b) A description of the qualifications, experience, and~~  
11 ~~previous performance required of the proposer;~~

12 (be) A description of the factors criteria, other than  
13 modifications to the basis of design (?), that may will be  
14 considered by the public body that add value to the project; and

**Comment [d4]:** Suggest considering deleting "other than modifications to the basis of design." A description of the criteria to be considered should take care of it. Not sure what modifications to the basis of the design adds since this is not a DB project.

15 (d) A description of the process the public body will use to  
16 evaluate the proposals ~~and finalists' proposals~~, including  
17 evaluation factors criteria and the relative weight of factors  
18 criteria and any specific forms to be used by the proposers  
19 (evaluation forms?).

**Comment [d5]:** Is the reference to specific forms necessary?

20 ~~(43)~~ The public body must establish an evaluation committee to  
21 evaluate proposals. Evaluations are based on the criteria and  
22 process identified in the bid-proposal documents. Based on the  
23 evaluation committee's findings, the public body will select the  
24 firm offering the best combination of price and value added.

**Comment [d6]:** Suggest adding reference to combination since price may or may not be the best.

25 ~~(54)~~ A public body utilizing the best value contracting  
26 procedure shall submit project information as required by the  
27 capital projects advisory review board. Contract documents must  
28 include requirements that the contractor, subcontractors, and  
29 designers also submit project information as required by the board.

**Comment [d7]:** See my comment no. 1 above.

30

--- END ---